

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1068

Introduced by Assembly Member Bloom

February 22, 2013

An act to amend ~~Section~~ *Sections 49073 and 49076* of the Education Code, relating to pupil records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1068, as amended, Bloom. Pupil records.

~~Existing~~

(1) Existing law prohibits a school district from permitting access to pupil records to any person without parental consent or without a judicial order, except to specified persons under certain circumstances, including to a pupil 16 years of age or older or who has completed grade 10.

This bill would additionally permit access to a ~~minor pupil~~ who is ~~15~~ 14 years of age or older if the ~~minor meets certain requirements, including that he or she is living separate and apart from his or her parent or guardian, and is managing his or her own financial affairs~~ pupil is both a homeless child or youth and an unaccompanied youth, as defined, and to an individual who has completed and signed a Caregiver's Authorization Affidavit for purposes of enrolling a minor in school. By imposing additional duties on school districts, the bill would impose a state-mandated local program.

~~The~~

(2) Existing law authorizes school districts to release pupil directory information, as specified, and defines directory information as one or more prescribed items, including, among others, a pupil's name, address, telephone number, and date of birth.

This bill would prohibit the release of directory information of any pupil identified as a homeless child or youth, as defined, unless a parent or eligible pupil has given written consent that such information may be released.

(3) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 49073 of the Education Code is amended*
2 *to read:*
3 49073. (a) School districts shall adopt a policy identifying
4 those categories of directory information as defined in subdivision
5 (c) of Section 49061 that may be released. The *school* district shall
6 determine which individuals, officials, or organizations may receive
7 directory information. However, no information may be released
8 to a private profitmaking entity other than employers, prospective
9 employers, and representatives of the news media, including, but
10 not limited to, newspapers, magazines, and radio and television
11 stations. The names and addresses of pupils enrolled in grade 12
12 or who have terminated enrollment ~~prior to~~ *before* graduation may
13 be provided to a private school or college operating under Chapter
14 ~~7 8~~ (commencing with Section ~~94700~~ 94800) of Part 59 of
15 *Division 10 of Title 3* or its authorized representative. However,
16 no such private school or college shall use that information for
17 other than purposes directly related to the academic or professional
18 goals of the institution, and ~~any~~ *a* violation of this provision is a
19 misdemeanor, punishable by a fine of not to exceed two thousand
20 five hundred dollars (\$2,500). In addition, the privilege of the
21 *private* school or college to receive the information shall be
22 suspended for a period of two years from the time of discovery of
23 the misuse of the information. Any *school* district may limit or
24 deny the release of specific categories of directory information to

1 any public or private nonprofit organization based upon a
2 determination of the best interests of pupils.

3 **Directory**

4 (b) *Directory* information may be released according to local
5 policy as to any pupil or former pupil. However, notice shall be
6 given at least on an annual basis of the categories of information
7 that the school plans to release and of the recipients. ~~No directory~~
8 *Directory* information shall *not* be released regarding ~~any~~ a pupil
9 if a parent *of that pupil* has notified the school district that the
10 information shall not be released.

11 ~~This section shall become operative on January 1, 1997.~~

12 (c) *Directory* information shall not be released regarding a
13 pupil identified as a homeless child or youth, as defined in
14 paragraph (2) of Section 725 of the federal McKinney-Vento
15 Homeless Assistance Act (42 U.S.C. Sec. 11434a(2)), unless a
16 parent, or pupil accorded parental rights, as identified in the
17 federal Family Education Rights and Privacy Act of 2001 (20
18 U.S.C. Sec. 1232g), has provided written consent that directory
19 information may be released.

20 **SECTION 1.**

21 *SEC. 2.* Section 49076 of the Education Code is amended to
22 read:

23 49076. (a) A school district shall not permit access to pupil
24 records to a person without written parental consent or under
25 judicial order except as set forth in this section and as permitted
26 by Part 99 (commencing with Section 99.1) of Title 34 of the Code
27 of Federal Regulations.

28 (1) Access to those particular records relevant to the legitimate
29 educational interests of the requester shall be permitted to the
30 following:

31 (A) School officials and employees of the school district,
32 members of a school attendance review board appointed pursuant
33 to Section 48321 who are authorized representatives of the school
34 district, and any volunteer aide, 18 years of age or older, who has
35 been investigated, selected, and trained by a school attendance
36 review board for the purpose of providing followup services to
37 pupils referred to the school attendance review board, provided
38 that the person has a legitimate educational interest to inspect a
39 record.

1 (B) Officials and employees of other public schools or school
2 systems, including local, county, or state correctional facilities
3 where educational programs leading to high school graduation are
4 provided or where the pupil intends to or is directed to enroll,
5 subject to the rights of parents as provided in Section 49068.

6 (C) Authorized representatives of the Comptroller General of
7 the United States, the Secretary of Education, and state and local
8 educational authorities, or the United States Department of
9 Education's Office for Civil Rights, if the information is necessary
10 to audit or evaluate a state or federally supported education
11 program, or in connection with the enforcement of, or compliance
12 with, the federal legal requirements that relate to such a program.
13 Records released pursuant to this ~~section~~ *subparagraph* shall
14 comply with the requirements of Section 99.35 of Title 34 of the
15 Code of Federal Regulations.

16 (D) Other state and local officials to the extent that information
17 is specifically required to be reported pursuant to state law adopted
18 before November 19, 1974.

19 (E) Parents of a pupil 18 years of age or older who is a
20 dependent as defined in Section 152 of Title 26 of the United States
21 Code.

22 (F) A pupil 16 years of age or older or having completed the
23 10th grade who requests access.

24 (G) A district attorney who is participating in or conducting a
25 truancy mediation program pursuant to Section 48263.5, or Section
26 601.3 of the Welfare and Institutions Code, or participating in the
27 presentation of evidence in a truancy petition pursuant to Section
28 681 of the Welfare and Institutions Code.

29 (H) A district attorney's office for consideration against a parent
30 or guardian for failure to comply with the Compulsory Education
31 Law (Chapter 2 (commencing with Section 48200)) or with
32 Compulsory Continuation Education (Chapter 3 (commencing
33 with Section 48400)).

34 (I) (i) A probation officer, district attorney, or counsel of record
35 for a minor for purposes of conducting a criminal investigation or
36 an investigation in regards to declaring a person a ward of the court
37 or involving a violation of a condition of probation.

38 (ii) For purposes of this subparagraph, a probation officer,
39 district attorney, and counsel of record for a minor shall be deemed

1 to be local officials for purposes of Section 99.31(a)(5)(i) of Title
2 34 of the Code of Federal Regulations.

3 (iii) Pupil records obtained pursuant to this subparagraph shall
4 be subject to the evidentiary rules described in Section 701 of the
5 Welfare and Institutions Code.

6 (J) A judge or probation officer for the purpose of conducting
7 a truancy mediation program for a pupil, or for purposes of
8 presenting evidence in a truancy petition pursuant to Section 681
9 of the Welfare and Institutions Code. The judge or probation officer
10 shall certify in writing to the school district that the information
11 will be used only for truancy purposes. A school district releasing
12 pupil information to a judge or probation officer pursuant to this
13 subparagraph shall inform, or provide written notification to, the
14 parent or guardian of the pupil within 24 hours of the release of
15 the information.

16 (K) A county placing agency when acting as an authorized
17 representative of a state or local educational agency pursuant to
18 subparagraph (C). School districts, county offices of education,
19 and county placing agencies may develop cooperative agreements
20 to facilitate confidential access to and exchange of the pupil
21 information by email, facsimile, electronic format, or other secure
22 means, provided the agreement complies with the requirements
23 set forth in Section 99.35 of Title 34 of the Code of Federal
24 Regulations.

25 ~~(L) A minor 15 years of age or older who meets both of the~~
26 ~~following requirements:~~

27 ~~(i) The minor is living separate and apart from his or her parents~~
28 ~~or guardian, whether it is with or without the consent of a parent~~
29 ~~or guardian, and regardless of the duration of the separation.~~

30 ~~(ii) The minor is managing his or her own financial affairs,~~
31 ~~regardless of the minor's source of income.~~

32 ~~(L) A pupil 14 years of age or older who meets both of the~~
33 ~~following criteria:~~

34 ~~(i) The pupil is a homeless child or youth, as defined in~~
35 ~~paragraph (2) of Section 725 of the federal McKinney-Vento~~
36 ~~Homeless Assistance Act (42 U.S.C. Sec. 11434a(2)).~~

37 ~~(ii) The pupil is an unaccompanied youth, as defined in~~
38 ~~paragraph (6) of Section 725 of the federal McKinney-Vento~~
39 ~~Homeless Assistance Act (42 U.S.C. Sec. 11434a(6)).~~

1 (M) *An individual who completes items 1 to 4, inclusive, of the*
2 *Caregiver's Authorization Affidavit, as provided in Section 6552*
3 *of the Family Code, and signs the affidavit for the purpose of*
4 *enrolling a minor in school.*

5 (2) School districts may release information from pupil records
6 to the following:

7 (A) Appropriate persons in connection with an emergency if
8 the knowledge of the information is necessary to protect the health
9 or safety of a pupil or other persons. Schools or school districts
10 releasing information pursuant to this ~~section~~ *subparagraph* shall
11 comply with the requirements set forth in Section 99.32(a)(5) of
12 Title 34 of the Code of Federal Regulations.

13 (B) Agencies or organizations in connection with the application
14 of a pupil for, or receipt of, financial aid. However, information
15 permitting the personal identification of a pupil or his or her parents
16 may be disclosed only as may be necessary for purposes as to
17 determine the eligibility of the pupil for financial aid, to determine
18 the amount of the financial aid, to determine the conditions which
19 will be imposed regarding the financial aid, or to enforce the terms
20 or conditions of the financial aid.

21 (C) Pursuant to Section 99.37 of Title 34 of the Code of Federal
22 Regulations, a county elections official, for the purpose of
23 identifying pupils eligible to register to vote, or for conducting
24 programs to offer pupils an opportunity to register to vote. The
25 information shall not be used for any other purpose or given or
26 transferred to any other person or agency.

27 (D) Accrediting associations in order to carry out their
28 accrediting functions.

29 (E) Organizations conducting studies for, or on behalf of,
30 educational agencies or institutions for the purpose of developing,
31 validating, or administering predictive tests, administering student
32 aid programs, and improving instruction, if the studies are
33 conducted in a manner that will not permit the personal
34 identification of pupils or their parents by persons other than
35 representatives of the organizations, the information will be
36 destroyed when no longer needed for the purpose for which it is
37 obtained, and the organization enters into a written agreement with
38 the educational agency or institution that complies with Section
39 99.31(a)(6) of Title 34 of the Code of Federal Regulations.

1 (F) Officials and employees of private schools or school systems
2 where the pupil is enrolled or intends to enroll, subject to the rights
3 of parents as provided in Section 49068 and in compliance with
4 the requirements in Section 99.34 of Title 34 of the Code of Federal
5 Regulations. This information shall be in addition to the pupil's
6 permanent record transferred pursuant to Section 49068.

7 (G) (i) A contractor or consultant with a legitimate educational
8 interest who has a formal written agreement or contract with the
9 school district regarding the provision of outsourced institutional
10 services or functions by the contractor or consultant.

11 (ii) Notwithstanding *the authorization in* Section
12 99.31(a)(1)(i)(B) of Title 34 of the Code of Federal Regulations,
13 a disclosure pursuant to this ~~paragraph~~ *subparagraph* shall not be
14 permitted to a volunteer or other party.

15 (3) A person, persons, agency, or organization permitted access
16 to pupil records pursuant to this section shall not permit access to
17 any information obtained from those records by another person,
18 persons, agency, or organization, except for allowable exceptions
19 contained within the federal Family Educational Rights and Privacy
20 Act of 2001 (20 U.S.C. Sec. 1232g) and state law, without the
21 written consent of the pupil's parent. This paragraph ~~does~~ *shall*
22 not require prior parental consent when information obtained
23 pursuant to this section is shared with other persons within the
24 educational institution, agency, or organization obtaining access,
25 so long as those persons have a legitimate educational interest in
26 the information pursuant to Section ~~99.31(a)(1)(i)(A)~~ *99.31(a)(1)*
27 of Title 34 of the Code of Federal Regulations.

28 (4) Notwithstanding any other ~~provision of~~ law, a school district,
29 including a county office of education or county superintendent
30 of schools, may participate in an interagency data information
31 system that permits access to a computerized database system
32 within and between governmental agencies or school districts as
33 to information or records that are nonprivileged, and where release
34 is authorized as to the requesting agency under state or federal law
35 or regulation, if each of the following requirements is met:

36 (A) Each agency and school district shall develop security
37 procedures or devices by which unauthorized personnel cannot
38 access data contained in the system.

1 (B) Each agency and school district shall develop procedures
2 or devices to secure privileged or confidential data from
3 unauthorized disclosure.

4 (C) Each school district shall comply with the access log
5 requirements of Section 49064.

6 (D) The right of access granted shall not include the right to
7 add, delete, or alter data without the written permission of the
8 agency holding the data.

9 (E) An agency or school district shall not make public or
10 otherwise release information on an individual contained in the
11 database if the information is protected from disclosure or release
12 as to the requesting agency by state or federal law or regulation.

13 (b) The officials and authorities to whom pupil records are
14 disclosed pursuant to subdivision (e) of Section 48902 and
15 subparagraph (I) of paragraph (1) of subdivision (a) shall certify
16 in writing to the disclosing school district that the information
17 shall not be disclosed to another party, except as provided under
18 the federal Family Educational Rights and Privacy Act of 2001
19 (20 U.S.C. Sec. 1232g) and state law, without the prior written
20 consent of the parent of the pupil or the person identified as the
21 holder of the pupil's educational rights.

22 (c) (1) ~~Any~~ A person or party who is not permitted access to
23 pupil records pursuant to subdivision (a) or (b) may request access
24 to pupil records as provided for in paragraph (2).

25 (2) A local educational agency or other person or party who has
26 received pupil records, or information from pupil records, may
27 release the records or information to a person or party identified
28 in paragraph (1) without the consent of the pupil's parent or
29 guardian pursuant to Section 99.31(b) of Title 34 of the Code of
30 Federal Regulations, if the records or information are deidentified,
31 which requires the removal of all personally identifiable
32 information, provided that the disclosing local educational agency
33 or other person or party has made a reasonable determination that
34 a pupil's identity is not personally identifiable, whether through
35 single or multiple releases, and has taken into account other
36 pertinent reasonably available information.

37 ~~SEC. 2.~~

38 *SEC. 3.* If the Commission on State Mandates determines that
39 this act contains costs mandated by the state, reimbursement to
40 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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